

Thomas R. Burke (CA State Bar No. 141930)
 Jeff Glasser (CA State Bar No. 252596)
 DAVIS WRIGHT TREMAINE LLP
 505 Montgomery Street, Suite 800
 San Francisco, California 94111
 Telephone: (415) 276-6500
 Facsimile: (415) 276-6599
 Email: thomasburke@dwt.com
 jeffglasser@dwt.com

Matt Zimmerman (CA State Bar No. 212423)
 ELECTRONIC FRONTIER FOUNDATION
 454 Shotwell Street
 San Francisco, CA 94110
 Telephone: (415) 436-9333
 Facsimile: (415) 436-9993
 Email: mattz@eff.org

Attorneys for Defendants Council on American-Islamic Relations, Inc.,
 Council on American-Islamic Relations Action Network, Inc.,
 and Council on American-Islamic Relations of Santa Clara, Inc.

IN THE UNITED STATES DISTRICT COURT
 THE NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

MICHAEL SAVAGE,
 Plaintiff,

v.

COUNCIL ON AMERICAN-ISLAMIC
 RELATIONS, INC., COUNCIL ON
 AMERICAN ISLAMIC RELATIONS ACTION
 NETWORK, INC., COUNCIL ON AMERICAN
 ISLAMIC RELATIONS OF SANTA CLARA,
 INC., and DOES 3-100,

Defendants.

Case No. CV07-06076 SI

**DECLARATION OF THOMAS R.
 BURKE IN SUPPORT OF CAIR's
 MOTION FOR ATTORNEYS' FEES AND
 COSTS**

Date: October 3, 2008
 Time: 9:00 a.m.
 Honorable Susan Illston

Assigned to the Honorable Susan Illston

I, Thomas R. Burke, declare as follows:

1 1. I am an attorney and a partner with Davis Wright Tremaine LLP, and lead counsel
2 for Defendants Council on American-Islamic Relations, Inc., Council on American-Islamic
3 Relations Action Network, Inc., and Council on American-Islamic Relations of Santa Clara, Inc.,
4 collectively (collectively "CAIR") in this action. I make these statements of my personal
5 knowledge and could competently testify to them if called as a witness.

6 2. After being retained by CAIR in December of 2007, my firm immediately began to
7 assist CAIR in evaluating Plaintiff's Complaint and researching the available legal defenses. As
8 reflected in the contemporaneous time entries that were recorded for this matter, attached hereto as
9 Exhibit A, we analyzed Plaintiff's Complaint (and later Amended Complaints) with the singular
10 goal of directing all our work toward preparing a motion that would ensure a summary dismissal of
11 this action. In addition, our firm met with representatives of the clients, worked with Nadhira Al-
12 Khalili, CAIR's national legal counsel (located in Washington, D.C.), to prepare a detailed Answer
13 to Plaintiff's Amended Complaint to accompany the Motion for Judgment on the Pleadings, and to
14 coordinate discrete tasks to be performed by CAIR employees and volunteers to cost-effectively
15 assist in the defense of this action.

16 3. I am lead counsel for CAIR in this action and have overall responsibility for CAIR's
17 defense. My responsibilities included overall defense strategy, supervision of legal research,
18 communications with the clients and Ms. Al-Khalili, editing of the Motion and supporting
19 declarations, and arguing the Motion before the Court. In connection with this fees motion, I
20 reviewed and prepared my firm's billing entries, coordinated strategy with our co-counsel (who
21 took the lead), prepared this declaration and helped to edit the Motion. To date, the total hours
22 billed by DWT personnel on this matter is 334.40 representing \$113,570.60 in total fees. Costs
23 incurred by DWT on behalf of CAIR total \$890 including \$75.00 in filing fees (to file a CD of the
24 audio excerpts in dispute), and \$815 in disbursements for online legal research (billed at cost) and
25 hand-deliveries to the Court (required by the local rules). This fees request is based upon recorded
26 daily time entries for services actually performed in connection with this matter, multiplied by my
27 firm's standard rates at the times that the services were performed. I personally reviewed these
28 entries individually and collectively. In several instances, the entries reflect time that was reduced

1 from what was actually incurred. Moreover, given the amorphous and “polemic” nature of
2 Plaintiff’s Complaint, much of counsel’s time was devoted generally to the defense of the litigation
3 as a whole, making it difficult to divide the hours expended on an individual claim-by-claim basis.

4 4. I was fortunate to also rely on several individuals within my firm to assist me.
5 Working under my supervision, Jeff Glasser performed the bulk of the legal research regarding the
6 RICO and First Amendment issues, conducting discrete research on fair use doctrine case law in
7 the Ninth Circuit and to draft the Motion for Judgment on the Pleadings. Mr. Glasser is an
8 associate in the firm’s Los Angeles office. He obtained his J.D. in 2007 from Boalt Hall and his
9 Bachelor’s degree from Yale University in 1996. Before law school, Mr. Glasser was a Senior
10 Editor and Midwest Bureau Chief for *U.S. News & World Report* and also a researcher and
11 collaborator with Bob Woodward for his best-selling book, “Shadow: Five Presidents & The
12 Legacy of Watergate.” Mr. Glasser’s biography is attached as Exhibit B. I also consulted with Eric
13 Stahl regarding key copyright issues in this case. Mr. Stahl is a partner in the firm’s Seattle office
14 who regularly advises clients throughout the country on copyright issues. Mr. Stahl has litigated
15 intellectual property disputes nationwide, including before federal trial courts, the Ninth Circuit,
16 and the U.S. Supreme Court. He received his J.D. from the University of Washington School of
17 Law in 1997, where he graduated first in his class and served as Executive Articles Editor of the
18 *Washington Law Review*. Mr. Stahl’s biography is attached as Exhibit C. I also briefly consulted
19 with my partner Bruce Johnson (\$445 per hour) (A.B., Harvard University (1972), B.A. Cambridge
20 University (1974), J.D. Yale University (1977), M.A. Cambridge University (1978)) on a
21 procedural question, and had assistance from Allan Patterson, an experienced paralegal based in
22 San Francisco (\$200.00 per hour) and our librarian in San Francisco, Jason Callan (\$165 per hour),
23 who helped to compile exhibits and information for the filings and hearing.

24 5. I earned my Bachelor’s degree, *magna cum laude*, from Arizona State University in
25 1984 and attended the University of San Francisco School of Law where I graduated, *magna cum*
26 *laude*, in 1989. While in law school, I was an extern law clerk for the Honorable U.S. District
27 Court Judge Marilyn Hall Patel of the Northern District of California. Since being admitted to the
28 California Bar in 1989, I have been in private practice in the Bay Area with a concentration on First

1 Amendment and media law matters. I regularly represent media clients including *The San*
2 *Francisco Examiner*, *The New York Times*, *The Bakersfield Californian*, McClatchy Company, *The*
3 *San Francisco Bay Guardian*, *The Sacramento News & Review*, CNN, CBS, NBC and others.
4 Since 2002, I am also a Lecturer at the Graduate School of Journalism, University of California,
5 Berkeley. I am listed in *Chambers USA: America's Leading Lawyers* for Media and Entertainment
6 Matters and named as one of the *Best Lawyers in America* in First Amendment Law by
7 Woodward/White, 2006. A copy of my biography is attached as Exhibit D.

8 6. My regular hourly rate in 2007 is \$450 per hour. Effective January 1, 2008, my rate
9 increased to \$475 per hour. However, I agreed to continue to bill my 2007 hourly rate due to the
10 financial constraints imposed on CAIR by this litigation. Mr. Glasser and Mr. Stahl's billing rates
11 are \$240 and \$360 respectively; their rates have remained the same for the duration of this matter. I
12 am a former member of my firm's Executive Committee and am a current member of the
13 committee of the firm that reviews all associate and contract attorneys of the firm. In this capacity,
14 I am personally familiar with information concerning the billing rates charged by attorneys in the
15 San Francisco Bay Area. I have carefully reviewed both the work performed and the hourly billing
16 rates charged by the defense attorneys representing CAIR in this litigation and believe the hourly
17 rates being sought are comparable to, if not less than, the hourly rates charged by other attorneys in
18 the San Francisco Bay Area with similar practices and expertise in these kinds of matters. Courts
19 have found DWT's rates to be reasonable in several recent cases. For example, in *Taus v. Loftus*,
20 40 Cal.4th 683 (2007), in connection with an anti-SLAPP Motion and subsequent appeals, on
21 remand, a portion of clients DWT represented were awarded \$240,000 in fees and costs (using rates
22 set by an insurer over a multiple-year period); in *Simpson Strong-Tie v. Gore*, Santa Clara County
23 Superior Court, Case No. 106CV-057666; (S164174) (Petition for Review granted by the
24 California Supreme Court on July 30, 2008 to address two non-fees related issues), in connection
25 with another anti-SLAPP Motion, DWT's client was awarded \$74,124.50 in fees and costs (using
26 2006 rates).

27 7. In addition to my law firm, CAIR was also represented by the Electronic Frontier
28 Foundation ("EFF"), who agreed to perform its legal services on a *pro bono* basis. From the

1 beginning and continuing through this motion, working with EFF Senior Counsel Matthew
2 Zimmerman, we were able to avoid duplication by assignment of specific tasks. For example, our
3 firm undertook to analyze the entire action, to review Plaintiff's extensive legal and factual
4 allegations, to work with CAIR to prepare its detailed Answer, and to research and draft CAIR's
5 RICO and First Amendment arguments. Mr. Zimmerman focused his attention on researching and
6 drafting the fair use arguments, which were supplemented by selected copyright research and
7 discrete drafting and editing performed by my firm. In connection with this fees motion, Mr.
8 Zimmerman drafted the motion while our firm compiled its billing information and helped with
9 strategic questions and editing. Throughout this lawsuit, tasks were not duplicated between Davis
10 Wright Tremaine LLP and EFF and the division of work proved to be both economical and
11 effective in light of the decision rendered by this Court.

12 8. Attached as Exhibit E to this Declaration is an email that I received from Plaintiff's
13 counsel, Daniel Horowitz on February 28, 2008, outlining the extensive discovery plan Mr.
14 Horowitz proposed for this case.

15 I declare under penalty of perjury under the laws of the United States that the foregoing is
16 true and correct. Executed in San Francisco, California, on August 29, 2008.

17
18 /s/ Thomas R. Burke
19 Thomas R. Burke
20
21
22
23
24
25
26
27
28